

Received & Inspected

REQUEST FOR REVIEW
before the
FEDERAL COMMUNICATIONS COMMISSION

AUG 01 2012

FCC Mail Room

CC Docket No. 02-06

Re: Applicant Name: SHANNON COUNTY SCHOOL DISTRICT 65-1
Billed Entity No: 134286
Funding Year: 2011-2012
Form 471 Application No.: 819274
Funding Request Nos.: 2229931, 2229967, 2230032, 2230080, 2230115

I. INTRODUCTION

Pursuant to 47 C.F.R. §54.719(c), the Shannon County School District 65-1 (the “District”) appeals to the FCC from the Universal Service Administrative Company, Schools & Libraries Division (“USAC”) decision dated May 29, 2012, denying funding for the above-stated FRNs because the District “did not demonstrate . . . that price was the primary factor when Shannon County School District 65-1 selected their service provider.”¹ The District seeks remand to USAC for full funding of the FRNs.²

Enclosed for the Commission’s consideration are the following documents:

Exhibit A: Administrator’s Decision on Appeal-Funding Year
2011-2012

Exhibit B: Affidavit of Dana L. Christensen, Director of Technology
for the District

II. STATEMENT OF FACTS

The Shannon County School District 65-1 is the only public school district serving the Pine Ridge Indian Reservation in South Dakota. The District provides Pre-K through 8th grade public educational programs at four schools located in or near the communities of

¹ Exhibit A, pp. 1-2.

² This Request for Review is being timely filed on the next business day as the filing date was Saturday, July 28, 2012. 47 C.F.R. §1.4(j).



Batesland, Pine Ridge, Hermosa, and Porcupine. In addition, the District operates the Shannon County Virtual High School that offers students the opportunity to complete their high school diploma requirements online. Approximately 100% of the District's school enrollment is American Indian.

The District acknowledges the Federal Communications Commission's competitive bidding rules:

[A]pplicants must select the most cost-effective service offerings, and price must be the primary factor in determining whether a particular vendor is the most cost-effective. Applicants may also consider relevant factors others than the pre-discount prices submitted by providers. . . When evaluating bids, however, applicants must have a separate "cost category" and that category must be given more weight than any other single factor.³

In this case, FCC precedent supports a waiver for the District of the requirement that the cost category be given more weight than any other single factor. As set forth below, such a waiver is in the public interest.

Here, the District did consider relevant factors other than cost when determining the most cost-effective vendor, and did have a separate cost category, but that separate cost category was not given more weight than any of the other factors. Instead, each of the factors were given the same weight.⁴ Utilizing its selection criteria, the District determined that KT Connections was the most cost-effective vendor for both its school wiring projects and district-wide switch replacement projects. In fact, as to the district-wide switch replacement

³ In the Matter of Requests for Review of Decisions of the Universal Service Administrator by Allendale County School District, CC Docket No. 02-6, SLD-415662, et al., ¶ 4.(Rel. April 21, 2011). (Footnote omitted).

⁴ Exhibit B, Affidavit at ¶¶5-6.

projects, KT Connections did propose the lowest cost for the services and equipment to be provided.⁵

As to the school wiring projects, KT Connections submitted the second lowest cost. However, the lowest proposer, Dakota 2000, was substantially non-responsive in a number of ways. It did not meet the due date for its proposal, and when submitted, the proposal did not quote required fiber or cabling, and fiber runs were missing. Though the District could have declared Dakota 2000 non-responsive, it did score Dakota 2000's proposal, thereby, demonstrating that Dakota 2000 would not have been selected in any event.⁶

III. DISCUSSION

The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. 47 C.F.R. §1.3. That is the case here. The requirement that price be the primary factor in selecting an E-rate vendor is found at 47 C.F.R. §54.503(c)(2)(vii) and §54.511(a). In *Allendale*, certain of the petitioners were denied funding by USAC because they did not consider price as the primary factor in their vendor selection process. The FCC did not disagree with USAC's determination of noncompliance. However, its review of the factual record showed “. . . that for seven petitioners, the winning vendor's cost proposal was lower than the competing bids and therefore the applicants selected the least expensive service offering.”⁷ As a result, the FCC determined “. . . that a limited waiver of sections 54.503(c)(2)(vii) and 54.511(a) . . . is in the public interest given the facts of each case and that this determination results in more effective implementation of Commission policy on competitive bidding.” The Commission also noted

⁵ Id. at ¶7.

⁶ Id. at ¶¶8-9, and E-Rate Memo p. 3.

⁷ *Allendale* Request for Review, supra at ¶10 (footnotes omitted).

that it found nothing in the record to indicate “evidence of waste, fraud or abuse, or misuse of funds.”⁸

A. District-Wide School Replacement Projects

In the present appeal by Shannon County School District, the successful vendor, KT Connections, proposed the lowest cost for the services and equipment to be provided in the district-wide replacement projects. Further, there is nothing in the record, nor did USAC allege, any evidence of waste, fraud or abuse or misuse of funds. As such, for the reasons and rationale discussed and followed by the Commission in *Allendale*, a waiver of FCC rules is appropriate and in the public interest as to those projects.

A remand by the Federal Communication Commission to the SLD for full funding of the district-wide replacement projects in this appeal would also be consistent with the FCC’s recent *Colorado Springs* decision.⁹ In that case, funding was denied by USAC because price was not the primary factor in Colorado Springs’ selection process. However, because the vendor selected by Colorado Springs was the least expensive and most cost-effective, the Federal Communication Commission found:

that, in these instances, a waiver of sections 54.503(c)(2)(vii) and 54.511(a) of the Commission’s rules, which require applicants to use price as the primary factor in the vendor selection process, is in the public interest. Further, at this time, there is no evidence of waste, fraud and abuse in the record.¹⁰

⁸ Id. at ¶12 (footnotes omitted).

⁹ In the Matter of Requests for Review Waiver of Decisions of the Universal Service Administrator by Colorado Springs School District, CC Docket No. 02-6, SLD-675773, 693741, 714290 (Rel. June 20, 2012).

¹⁰ Id. at ¶1 (footnote omitted).

B. School Wiring Projects

In *Allendale*, one of the petitioners, Point Pleasant, failed to assign the highest weight to the price category in its vendor selection process. It selected the second lowest cost proposal because it had assigned an 80% weight to the performance category and was able to deny selection to the lowest cost proposer whose performance in the previous funding year had been non functional.

The FCC noted “that consistent with E-rate program rules, Point Pleasant could have set up the bidding process in a way that disqualified [lowest cost proposer] before even considering price as a factor.”¹¹ As a result, it granted that petitioner’s waiver request recognizing “that if the petitioner had disqualified [the lowest cost proposer] from the bidding process based on past performance, then [higher cost proposer] would have been the lowest qualified bidder.”¹² As a result, the FCC waived sections 54.503(c)(2)(vii) and 54.511(a) finding the facts appropriate and in the public interest.

The factual situation for the Shannon County School District as to its selection of KT Connections for its school wiring projects tracks, to a great extent, the Point Pleasant facts set forth above in *Allendale*. Although KT Connections was the second lowest cost proposer, the lowest proposer, Dakota 2000, submitted its proposal three days beyond the due date, with two additional resubmissions after that first submission date. The substantive content of Dakota 2000’s proposal was also flawed. As such, the District could have disqualified Dakota 2000 by declaring it non responsive, and selected KT Connections as the lowest cost proposer. It did not do so. However, its analysis, review, and scoring reflected Dakota 2000’s non responsiveness, such that KT Connections was awarded the highest point score.

¹¹ Id. at ¶11 (footnote omitted).

¹² Id.



Therefore, consistent with the FCC's analysis and determination as to Point Pleasant, a waiver of the applicable rules set forth above also effectively implements the Commission's policy on competitive bidding, and is appropriate and in the public interest as to the school wiring projects at issue here.

III. CONCLUSION

In addition to the discussion above, the FCC has recognized that "waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule."¹³ Failure to receive the funds at issue in this matter will have a significant, detrimental impact on the District and its American Indian students. With no choice but to use other funds to replace denied E-rate funding, other educational needs of the District will be adversely affected.

Clearly, the facts of this case warrant the FCC granting the appropriate rule waivers, with remand to USAC directing that full funding of the FRNs at issue be approved.

DATED at Anchorage, Alaska, this 30th day of July, 2012.

JERMAIN, DUNNAGAN & OWENS, P.C.
Attorneys for Shannon County
School District 65-1

By: _____

Saul R. Friedman

¹³ In the Matter of Requests for Review of the Decision of the Universal Service Administrator by Alaska Gateway School District, CC Docket No. 02-6, SLD-412028, et al., ¶5 (Rel. September 14, 2006).



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2011-2012

May 29, 2012

Dana Christensen
Shannon County School District 65-1
206 School Street
Batesland, SD 57716-0109

Re: Applicant Name: SHANNON COUNTY SCHOOL DISTRICT
65-1
Billed Entity Number: 134286
Form 471 Application Number: 819274
Funding Request Number(s): 2229931, 2229967, 2230032, 2230080, 2230115
Your Correspondence Dated: April 12, 2012

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2011 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2229931, 2229967, 2230032, 2230080, 2230115
Decision on Appeal: Denied
Explanation:

- According to our records, Shannon County School District 65-1 was contacted and asked to provide documentation explaining the vendor selection process. The documentation provided by Shannon County School District 65-1 included the bid evaluation score sheet, number of bids received and factors used in the vendor selection process. USAC has thoroughly reviewed this documentation and determined that price was not a factor in the vendor selection process. Program rules require that price must be the primary factor in the vendor selection process. Therefore, USAC correctly determined that the vendor selection process did not comply with the competitive bidding rules of the schools and libraries support mechanism. You did not demonstrate in your appeal that price was the primary

factor when Shannon County School District 65-1 selected their service provider. Consequently, the appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Dana Christensen
Shannon County School District 65-1
206 School Street
Batesland, SD 57716-0109

Billed Entity Number: 134286
Form 471 Application Number: 819274
Form 486 Application Number:

AFFIDAVIT OF DANA L. CHRISTENSEN

STATE OF SOUTH DAKOTA)
) ss
SHANNON COUNTY)

Dana L. Christensen, being first duly sworn under oath, states as follows:

1. I am the Director of Technology for the Shannon County School District 65-1, whose address is P. O. Box 109, Batesland, South Dakota 57716.

2. I was the District employee responsible for the process of soliciting proposals for the District's school wiring projects and District-wide switch replacement projects (hereinafter both referred to as "Projects," and then selecting the most cost effective proposals received. The Projects form the basis of the RFNs at issue in the District's Request for Review to the Federal Communications Commission.

3. Attached to this Affidavit are two documents I created. The first is my E-Rate Memo on Bidder Selection dated March 9, 2012. This Memo was prepared by me at the time I reviewed and analyzed the proposals that were received by the District for the Projects. My Memo was intended to memorialize my actions, thought process, and numerical scoring, in determining the most cost effective proposals received for the Projects.

4. The second document attached to this Affidavit is the E-Rate Bid Grading Sheet. This stand-alone grading sheet reflects the numerical analysis that I also performed at the time I was reviewing and analyzing the proposals received for the Projects.

5. The factors that I considered in determining the most cost effective proposals for the Projects were:

- a. Timeliness of Bids (By March 4 as Requested).
- b. Scope of Work Matches What Was Asked For.
- c. Attention to Detail of Needs.
- d. Site Visit for Bidding Process.
- e. Phone Conversations to Ensure All On Track.
- f. Seemed to Care About Outcome of Process.
- g. Email Communications During Process.
- h. Total Price of Project.
- i. Drawings of Project to Detail Procedure.

6. In scoring the proposals, each of those factors were given the same weight. In other words, the maximum score any proposer could receive for a factor was five (5) points. Thus, the maximum total number of points a proposer could receive was forty-five (45) points.

7. In regard to the District-wide switch replacement project, the highest number of points, forty five (45), was awarded to KT Connections. KT Connections also proposed the lowest cost for the services and equipment to be provided-- \$533,961.88. Although CDWG submitted a lower cost proposal, as shown on the E-Rate Bid Grading Sheet and as stated in my E-Rate Memo on Bidder Selection, CDWG did not provide a complete quote, proposing only for the equipment (switches).

8. In regard to the school wiring projects, KT Connections was the second lowest cost proposer and received four (4) out of the five (5) possible points. The lowest proposer, Dakota 2000, received five (5) points for that factor. However, as reflected by the E-Rate Bid Grading Sheet and my E-Rate Memo on Bidder Selection, Dakota 2000's proposal was submitted on March 7, 2012, three (3) days beyond the due date, with two additional resubmissions after March 7, 2012. Other circumstances discussed in my Memo reflect why for some factors, Dakota 2000 scored only one (1) point.

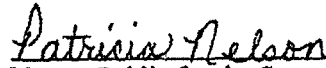
9. In actuality, I should have, and could have, declared Dakota 2000 non-responsive. Had I done that, KT Connections would have been the lowest cost proposer. I did not take such official action because the scoring demonstrated that Dakota 2000 would not be selected in any event.

Dated and signed at Batesland, South Dakota this 27th day of July, 2012.



Dana L. Christensen, Director of Technology

Subscribed and Sworn before me this 27th day of July, 2012.



Notary Public for the State of South Dakota

My Commission Expires: 12-09-15



From: Dana Christensen <danac@shannon.ws>
Subject: E-Rate Memo on Bidder Selection 2011-2012
Date: March 9, 2011 3:52:12 PM MST
To: danac7@mac.com
Cc: Coy Sasse <coysasse@shannon.ws>



1 Attachment, 43 KB

Note to file regarding selection process for selection of bidders for school wiring projects and switch replacement district wide:

Wiring Rockyford and Batesland

KT Connections - Bid was on time, earlier than the March 1 deadline originally established, bid was delivered February 28 in person to go over and finalize prior to submission, was on track with what specifications were given during bidding process, fiber was correct specification for both locations, attention to detail was outstanding, everything itemized and detailed quote submitted, drawings showing plan of what was proposed including battery backup units, 10 Gigabit connectivity, number of racks and security of the racks included, nothing hidden, excellent communication via phone, in person, and email - excellent quote.

Connecting Point - Bid received on March 4 as agreed with vendors for later due date, Good communication during project, quote pretty vague, specifications correct for number of drops and type of equipment to be used for wiring, 2 page quote with scope of services, our responsibilities, and wiring costs and professional fees one liner with dollar amount, no details, was a good attempt, but felt they really weren't going to be able to provide a good quote with distance limitations of their install crew

Dakota 2000 - Bid was late, had extended from March 1 original due date to March 4 being a Friday would allow time past my allowable filing date, Friday March 4 they still needed more time to submit, so allowed them Monday March 7, which it was received before noon, but then had to have them resubmit 2 more revisions as they did not quote type of fiber or CAT6 cabling I had requested, fiber runs were missed, trenching was added that was told to them via site visit and phone conversations is to be included in the construction project, not the E-Rate project, quote was itemized but again very vague not detailing the types of cabling, patch panels, fiber or fiber connectors, types of data racks, not pleased had to correct their quote for them twice, attention to detail seemed to be missing totally where they visited onsite February 16 to get quote details, over 2 weeks is not a lot of time, but should have been better quoted, too much a cookie cutter bid, things included on bid that shouldn't have where it was obviously copied and pasted for all quotes. Very personable, seemed interested in getting the job and helping us out, but really don't feel comfortable with their lack of attention to what I had requested of all bidders.

CDWG - Withdrew wiring bid after having scope of work go to meetings and phone conversations, didn't feel had enough time to provide a quality bid with installers in our area, retracted March 4 at 3:24 PM

Switch Replacement District Wide

KT Connections - Bid was on time submitted in person February 28, had established criteria during site visits in person looking at wiring details, scope of work matched perfectly with what I had requested of all bidders, high attention to detail, great communication via email, phone and in person during bid process, pricing of bid was lowest submitted and verified that it included all equipment necessary for 10 Gigabit backbone connectivity, offered better options on connections from edge switches to core switches and offered insight on future possibilities with Rockyford being a core location for Internet in an upgrade for the high end core switch with additional management module to satisfy future needs, and still lower priced with installation than other bidders, drawings included for visual representation of design - excellent quote

Connecting Point - Bid was on the March 4 deadline, scope of work detailed on quote matched what was submitted to bidders initially in more detail of how they would meet it, very good, very detailed quote sheet itemizing out all parts and how to best fit solution for us to ensure 10 Gigabit backbone and fiber connectivity we currently have and what is proposed for new additions, warranty declaration was also included via HP for lifetime guarantee, which is a no cost option. Bid was second lowest and feel it is correct with number of items and part numbers matching, much better quote with details.

Dakota 2000 - Bid was late, visited with them March 4 to find out where both quotes were, they requested extension to March 7, was then received prior to noon, but then in review, they did not quote the correct switches I had asked for from all vendors bidding, revised for me, realized then they had missed the 10 Gigabit capability which was one of main objectives to upgrade our 7 year old equipment, so they revised again, quoted lower priced options and missed pieces needed per quote request, again attention to detail seemed to be nonexistent so called them a 3rd time for another revision, which they provided a much better

quote, told them felt I shouldn't have to go the extra to make sure their quote was inclusive of what we had talked about during their one site visit, also had to question our state E-Rate representative of eligibility of a contingency fee they have included on all bids, seems they feel it is eligible, but our rep says otherwise, red flag, so looking at not considering totally due to program integrity, don't want to violate anything

CDWG - Quote submitted March 7 after email and phone call concerning retracting the bid for the wiring, wanted to submit something for the equipment only, but would not be installed or configured as requested in scope of work to all bidders, so not a complete quote, no battery back up equipment and of course was lowest with nothing on site, not considered for application as not what was completely requested for turnkey operation

Score sheet attached for selection process but is as follows:

KT Connections scored 44 of 45 total for wiring and 45 of 45 for switches quotes
 Connecting Point scored 30 of 45 total for wiring and 31 of 45 for switches quotes
 Dakota 2000 scored 31 of 45 total for wiring and 28 of 45 total for switches quotes
 CDWG scored a 24 of 45 total for the switches quote and withdrew from the wiring quote

Recommendation - Select KT Connections as best option that is fairly local in Rapid City for installation of cabling and switches, so if anything arises after the install, they are close for adjustments or warranty work.

E-Rate Bid Grading Sheet				
Vendor	KT Connections	Connecting Point	Dakota 2000	CDWG
Wiring Rockyhurst and Boteland Quotes				
Termination of Bids (By March 4 as Requested)				Withdrew 3-4-11
Scope of Work Matches What Was Asked For				No Installer after phone visit
Attention to Detail of Needs				
Site Visit for Ending Process				
Phone Communications to Ensure All On Track				
Seemed to Care About Outcome of Project				
Local Communication During Process				
Total Price of Project				
Drawings of Project to Detail Procedure				
TOTALS				
Rockhurst	200,319.08		158,060.77	
Boteland	130,574.12		104,934.76	
Combined	330,893.20	416,847.00	260,995.53	
Wiring			90,443.61	
Switches			16,843.14	
CDWG				Quoted Monarch cable instead of E-rate Missed main terminal to RT ending Quoted 32 strand fiber to bus bars
Switching Quotes				
Termination of Bids (By March 4 as Requested)				
Scope of Work Matches What Was Asked For				
Attention to Detail of Needs				
Site Visit for Ending Process				
Phone Communications to Ensure All On Track				
Seemed to Care About Outcome of Project				
Local Communication During Process				
Total Price of Project				
Drawings of Project to Detail Procedure				
TOTALS				
Switches	507,383.29	548,205.10	648,727.98	548,915.00
Installation	26,676.18	26,520.00	9,510.00	
Contingency Fee			38,377.50	
Basic Maintenance of Internal Connections			3,600.00	
Total	534,059.47	574,725.10	690,245.48	
	476,926.81 no APC		Quoted ggc only	Down's include APC's or installation
			Had to have quote revised 3 times to match what I had asked for during site visit	
Finalized March 9 2011 by Dana Christensen				

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Thank You,

Mr. Dana Christensen
Director of Technology
Shannon County Schools
206 School Street
Batesland, SD 57716

danac@shannon.ws
danac7@mac.com

605-288-1921 Office
605-455-8887 Direct Dial
605-685-8907 Cell
605-288-1982 Fax

E-Rate Bid Grading Sheet				
Vendor	KT Connections	Connecting Point	Dakota 2000	CDWG
Writing Rockyford and Batesland Quotes			Withdraw 3-4-11 No installer after phone visit	
			Scale of 1 to 5, 5 Being Highest	
Timeliness of Bids (By March 4 as Requested)	5	4	1	
Scope of Work Matches What Was Asked For	5	4	3	
Attention to Detail of Needs	5	4	3	
Site Visit for Bidding Process	5	1	5	
Phone Conversations to Ensure All On Track	5	4	4	
Seemed to Care About Outcome of Project	5	5	5	
Email Communication During Process	5	4	4	
Total Price of Project	4	3	5	
Drawings of Project to Detail Procedure	5	1	1	
Totals	44	30	31	0
Batesland	200,519.06		156,060.77	
Rockyford	130,524.12		104,934.76	
Combined	331,043.18	426,887.00	260,995.53	
RF			80,443.62	
RF Bus Barn			14,491.14	
			Quoted Mohawk cable instead of Essex Missed main connect to RF existing Quoted 12 Strand fiber to bus barn	
Switches Quotes			Scale of 1 to 5, 5 Being Highest	
Timeliness of Bids (By March 4 as Requested)	5	4	1	1
Scope of Work Matches What Was Asked For	5	4	3	2
Attention to Detail of Needs	5	4	2	2
Site Visit for Bidding Process	5	1	5	1
Phone Conversations to Ensure All On Track	5	4	4	3
Seemed to Care About Outcome of Project	5	5	5	5
Email Communication During Process	5	4	4	4
Total Price of Project	5	4	3	5
Drawings of Project to Detail Procedure	5	1	1	1
Totals	45	31	28	24
	Received 2-28-11	Received Late 3-4-11	Received 3-7-11	Received Late 3-7-11
Switches	507,285.29	548,205.50	646,722.98	348,915.00
Installation	26,676.59	26,520.00	9,570.00	
Contingency Fee			39,377.58	
Basic Maintenance of Internal Connections			3,680.00	
Total	533,961.88	574,725.50	699,350.56	
	476,926.41 no APC		Quoted g/g only	Doesn't include APC's Or Installation
			Had to have quote revised 3 times to match what I had asked for during site visit	
			Finalized March 9, 2011 by Dane Christensen	